

## HOUSE BILL NO. HB0141

Impaired driving prevention amendments.

Sponsored by: Representative(s) Gingery and Senator(s)  
Johnson and Massie

A BILL

for

1 AN ACT relating to driving under the influence; amending  
2 and creating definitions; amending the time for acceptable  
3 results from tests of blood alcohol concentration; creating  
4 a crime of aggravated driving under the influence; amending  
5 penalties; repealing a provision relating to the reduction  
6 or dismissal of charges; repealing evidentiary presumptions  
7 relating to blood alcohol concentration; clarifying and  
8 modifying factors relating to penalties for subsequent  
9 convictions; requiring the use of an ignition interlock  
10 system when specified conditions have occurred; eliminating  
11 the voluntary ignition interlock program; and providing for  
12 an effective date.

13

14 *Be It Enacted by the Legislature of the State of Wyoming:*

15

1           **Section 1.** W.S. 31-5-233(a)(ii) by creating a new  
2 subparagraph (C), by creating new paragraphs (vii) through  
3 (ix), (b), (d) through (f), (m)(i) and (ii) and by creating  
4 new subsections (n) and (o), 31-6-101(a)(ii) by creating a  
5 new subparagraph (C), 31-6-102(d)(i)(B), (e)(i)(B),  
6 31-6-103(b), 31-6-105(f) and 31-7-402(a) and (c)(intro) are  
7 amended to read:

8

9           **31-5-233. Driving or having control of vehicle while**  
10 **under influence of intoxicating liquor or controlled**  
11 **substances; penalties.**

12

13           (a) As used in this section:

14

15                   (ii) "Controlled substance" includes:

16

17                               (C) Any drug or psychoactive substance, or  
18 any combination of these substances, capable of impairing a  
19 person's physical or mental faculties.

20

21                               (vii) "Alcohol" means any substance or  
22 substances containing any form of alcohol;

23

1           (viii) "Chemical test" means a test which  
2 analyzes an individual's breath, blood, urine, saliva or  
3 other bodily fluids or tissues for evidence of drug or  
4 alcohol use;

5  
6           (ix) "Drive" or "driving" means to operate or be  
7 in actual physical control of a vehicle.

8  
9           (b) No person shall drive ~~or have actual physical~~  
10 ~~control of~~ any vehicle within this state if the person:

11  
12           (i) Has an alcohol concentration of eight one-  
13 hundredths of one percent (0.08%) or more; ~~or~~

14  
15           (ii) Has an alcohol concentration of eight one-  
16 hundredths of one percent (0.08%) or more, as measured  
17 within two (2) hours after the time of driving following a  
18 lawful arrest resulting from a valid traffic stop; or

19  
20           ~~(ii)~~ (iii) To a degree which renders ~~him~~ the  
21 offender incapable of safely driving:

22  
23           (A) Is under the influence of alcohol;

24

1 (B) Is under the influence of a controlled  
2 substance; or

3

4 (C) Is under the influence of a combination  
5 of any of the elements named in subparagraphs (A) and (B)  
6 of this paragraph.

7

8 (d) ~~Subsection (e)~~ Subsections (b) and (n) of this  
9 section shall not be construed as limiting the introduction  
10 of any other competent evidence bearing upon the question  
11 of whether the person was under the influence of alcohol,  
12 including tests obtained more than ~~three (3)~~ two (2) hours  
13 after the alleged violation. The fact that any person  
14 charged with a violation of subsection (b) of this section  
15 is or has been entitled to use the controlled substance  
16 under the laws of this state shall not constitute a defense  
17 against any charge under subsection (b) of this section.

18

19 (e) ~~Except as otherwise provided~~ The following  
20 penalties and sanctions shall apply:

21

22 (i) A person convicted of violating subsection  
23 (b) of this section, or other law prohibiting driving while  
24 under the influence shall be punished as follows:

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(A) For a first conviction under this subsection, the offender shall be guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both. In addition, the offender shall be ordered to or shall receive a substance abuse assessment conducted by a substance abuse provider certified by the department of health pursuant to W.S. 9-2-2701(c) at or before sentencing. The cost of the substance abuse assessment shall be assessed to and paid by the offender.

~~Except as otherwise provided in this subsection or subsection (h) or (m) of this section, a person convicted of violating this section is guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both.~~

(B) ~~On~~ For a second offense resulting in a conviction under this subsection within five (5) years after an offense resulting in a conviction for a violation of this section or other law prohibiting driving while under the influence, ~~he~~ the offender shall be punished guilty of a misdemeanor punishable by imprisonment for not

1 less than seven (7) days nor more than ~~six (6) months~~ one  
2 (1) year, ~~he~~ a fine of not less than two hundred dollars  
3 (\$200.00) nor more than seven hundred fifty dollars  
4 (\$750.00), or both. In addition, the offender shall be  
5 ordered to or shall receive a substance abuse assessment  
6 conducted by a substance abuse provider certified by the  
7 department of health pursuant to W.S. 9-2-2701(c) before  
8 sentencing. ~~and~~ The offender shall not be eligible for  
9 probation or suspension of sentence or release on any other  
10 basis until he has served at least seven (7) days in jail; ~~:-~~  
11 ~~In addition, the person may be fined not less than two~~  
12 ~~hundred dollars (\$200.00) nor more than seven hundred fifty~~  
13 ~~dollars (\$750.00).~~

14  
15 (C) On ~~For~~ a third offense resulting in a  
16 conviction under this subsection within ~~five (5) ten (10)~~  
17 years after an offense resulting in a conviction for a  
18 violation of this section or other law prohibiting driving  
19 while under the influence, ~~he~~ the offender shall be  
20 ~~punished~~ guilty of a misdemeanor punishable by imprisonment  
21 for not less than thirty (30) days nor more than ~~six (6)~~  
22 ~~months~~ one (1) year, shall be ordered to or shall receive a  
23 substance abuse assessment pursuant to W.S. 7-13-1302. ~~and~~  
24 The offender shall not be eligible for probation or

1 suspension of sentence or release on any other basis until  
2 he has served at least thirty (30) days in jail except that  
3 the court shall consider the substance abuse assessment and  
4 may order the ~~person~~ offender to undergo ~~outpatient~~ alcohol  
5 or substance abuse treatment during any mandatory period of  
6 incarceration. The minimum period of imprisonment for a  
7 third violation shall be mandatory, but the court, having  
8 considered the substance abuse assessment and the  
9 availability of public and private resources, may suspend  
10 up to fifteen (15) days of the mandatory period of  
11 imprisonment if, subsequent to the date of the current  
12 violation, the offender completes an inpatient treatment  
13 program approved by the court. In addition, the ~~person~~  
14 offender may be fined not less than seven hundred fifty  
15 dollars (\$750.00) nor more than three thousand dollars  
16 (\$3,000.00). The judge may suspend part or all of the  
17 discretionary portion of an imprisonment sentence under  
18 this ~~subsection~~ subparagraph and place the ~~defendant~~  
19 offender on probation on condition that the ~~defendant~~  
20 offender pursues and completes an alcohol ~~education~~ or  
21 substance abuse treatment program as prescribed by the  
22 judge; ~~Notwithstanding any other provision of law, the~~  
23 ~~term of probation imposed by a judge under this section may~~  
24 ~~exceed the maximum term of imprisonment established for the~~

1 ~~offense under this subsection provided the term of~~  
2 ~~probation together with any extension thereof, shall not~~  
3 ~~exceed three (3) years for up to and including a third~~  
4 ~~conviction.~~

5  
6 (D) On For a fourth or subsequent offense  
7 resulting in a conviction under this subsection within ~~five~~  
8 ~~(5) fifteen (15) years,~~ for a violation of this section or  
9 other law prohibiting driving while under the influence, he  
10 the offender shall be guilty of a felony and fined not more  
11 than ten thousand dollars (\$10,000.00), punished by  
12 imprisonment for not more than ~~two (2)~~ five (5) years, or  
13 both i.

14  
15 (E) For purposes of this subsection, a  
16 prior conviction of an offense under subsection (b), (h) or  
17 (n) of this section, or any offense from another  
18 jurisdiction containing the same or similar elements may be  
19 used to determine prior convictions.

20  
21 (ii) Except as otherwise provided in this  
22 subsection, a person convicted of violating subsection (n)  
23 of this section shall be punished as follows:

24

1                   (A) For a first offense under this  
2 paragraph, the offender shall be guilty of a misdemeanor  
3 punishable by imprisonment for not less than seven (7) days  
4 nor more than one (1) year, a fine of not less than two  
5 hundred dollars (\$200.00) nor more than seven hundred fifty  
6 dollars (\$750.00), or both. In addition, the offender shall  
7 be ordered to or shall receive a substance abuse assessment  
8 conducted by a substance abuse provider certified by the  
9 department of health pursuant to W.S. 9-2-2701(c) before  
10 sentencing and shall not be eligible for probation or  
11 suspension of sentence or release on any other basis until  
12 he has served at least seven (7) days in jail;

13  
14                   (B) For a second offense resulting in a  
15 conviction under this paragraph within ten (10) years after  
16 an offense resulting in a conviction for a violation of  
17 this section or other law prohibiting driving while under  
18 the influence, the offender shall be guilty of a  
19 misdemeanor punishable by imprisonment for not less than  
20 thirty (30) days nor more than one (1) year. In addition,  
21 the offender shall be ordered to or shall receive a  
22 substance abuse assessment pursuant to W.S. 7-13-1302 and  
23 shall not be eligible for probation or suspension of  
24 sentence or release on any other basis until he has served

1 at least thirty (30) days in jail except that the court  
2 shall consider the substance abuse assessment and may order  
3 the person to undergo alcohol or substance abuse treatment  
4 during any mandatory period of incarceration. The minimum  
5 period of imprisonment for a second violation shall be  
6 mandatory, but the court, having considered the substance  
7 abuse assessment and the availability of public and private  
8 resources, may suspend up to fifteen (15) days of the  
9 mandatory period of imprisonment if, subsequent to the date  
10 of the current violation, the offender completes an  
11 inpatient treatment program approved by the court. In  
12 addition, the offender shall be fined not less than seven  
13 hundred fifty dollars (\$750.00) nor more than three  
14 thousand dollars (\$3,000.00). The judge may suspend part or  
15 all of the discretionary portion of an imprisonment  
16 sentence under this subparagraph and place the offender on  
17 probation on condition that the offender pursues and  
18 completes an alcohol or substance abuse treatment program  
19 as prescribed by the judge;

20

21 (C) For a third or subsequent offense  
22 resulting in a conviction within fifteen (15) years, the  
23 offender shall be guilty of a felony and fined not more

1 than ten thousand dollars (\$10,000.00), punished by  
2 imprisonment for not more than five (5) years, or both.

3

4 (iii) For purposes of calculating penalties  
5 under this subsection, the time periods shall be based on  
6 the dates that the charged offenses occurred, not on the  
7 dates of conviction for those offenses.

8

9 (f) Any person convicted under this section or a  
10 municipal ordinance which substantially conforms to the  
11 provisions of this section shall, in addition to the  
12 penalty imposed:7

13

14 (i) Have his driver's license suspended or  
15 revoked pursuant to W.S. 31-7-127 or 31-7-128. The court  
16 shall forward to the department a copy of the record  
17 pertaining to disposition of the arrest or citation;7

18

19 (ii) For a conviction under subsection (n) of  
20 this section, or a second or subsequent conviction under  
21 subsection (b), obtain an ignition interlock restricted  
22 license as provided in W.S. 31-7-402.

23

1           (m) Any person eighteen (18) years of age or older  
2 who has a child passenger in the vehicle during a violation  
3 of this section shall be punished upon conviction as  
4 follows:

5  
6           (i) For a first conviction under this  
7 subsection, by imprisonment for not more than one (1) year,  
8 a fine of not more than seven hundred fifty dollars  
9 (\$750.00), or both. In addition, the offender shall be  
10 ordered to or shall receive a substance abuse assessment  
11 conducted by a substance abuse provider certified by the  
12 department of health pursuant to W.S. 9-2-2701(c) at or  
13 before sentencing. The cost of the substance abuse  
14 assessment shall be assessed to and paid by the offender;

15  
16           (ii) If previously convicted and sentenced under  
17 this subsection, or any other law substantially conforming  
18 to the provisions of this subsection, by imprisonment for  
19 not more than five (5) years, a fine of not more than five  
20 thousand dollars (\$5,000.00), or both.

21  
22           (n) A person is guilty of aggravated driving under  
23 the influence punishable as provided in paragraph (e)(ii)  
24 of this section if the person drives any motor vehicle

1 within this state if the person has an alcohol  
2 concentration of fifteen one-hundredths of one percent  
3 (0.15%) or more, as measured within two (2) hours after the  
4 time of driving following a lawful arrest resulting from a  
5 valid traffic stop.

6  
7 (o) Notwithstanding any other provision of law, the  
8 term of probation imposed by a judge under this section may  
9 exceed the maximum term of imprisonment established for the  
10 offense under this section provided the term of probation  
11 together with any extension thereof, shall not exceed three  
12 (3) years.

13  
14 **31-6-101. Definitions.**

15  
16 (a) As used in this act:

17  
18 (ii) "Controlled substance" includes:

19  
20 (C) Any drug or psychoactive substance, or  
21 combination of these substances, capable of impairing a  
22 person's physical or mental faculties.

23

1           **31-6-102. Test to determine alcoholic or controlled**  
2 **substance content of blood; suspension of license.**

3

4           (d) If a person under arrest refuses upon the request  
5 of a peace officer to submit to a chemical test designated  
6 by the agency employing the peace officer as provided in  
7 subsection (a) of this section, none shall be given except  
8 in cases where serious bodily injury or death has resulted.  
9 The peace officer shall submit his signed statement to the  
10 department. The statement submitted by the officer shall  
11 contain:

12

13           (i) His probable cause to believe the arrested  
14 person was driving or in actual physical control of a motor  
15 vehicle:

16

17           (B) In violation of W.S. ~~31-5-233(b)~~  
18 31-5-233 or any other law prohibiting driving under the  
19 influence as defined by W.S. 31-5-233(a)(v); and

20

21           (e) If a person submits to chemical testing and the  
22 test result indicates the person has an alcohol  
23 concentration of eight one-hundredths of one percent  
24 (0.08%) or more, the peace officer shall submit his signed

1 statement to the department. Based upon the statement the  
2 department shall suspend the person's Wyoming driver's  
3 license or his privilege to operate a motor vehicle in this  
4 state for ninety (90) days. If a criminal conviction  
5 results from the same incident on which a suspension under  
6 this subsection is based, the suspension under W.S.  
7 31-7-128(b) or revocation under W.S. 31-7-127(a)(ii) shall  
8 be reduced by ninety (90) days. The statement submitted by  
9 the officer shall contain:

10

11 (i) His probable cause to believe the arrested  
12 person was driving or in actual physical control of a motor  
13 vehicle:

14

15 (B) In violation of W.S. ~~31-5-233(b)~~  
16 31-5-233 or any other law prohibiting driving under the  
17 influence as defined by W.S. 31-5-233(a)(v).

18

19 **31-6-103. Application for hearing; stay of suspension**  
20 **of license; scope of hearing.**

21

22 (b) The scope of a hearing for the purposes of this  
23 act shall cover the issues of whether a peace officer had  
24 probable cause to believe the arrested person had been

1 driving or was in actual physical control of a motor  
2 vehicle upon a public street or highway in this state in  
3 violation of W.S. ~~31-5-233(b)~~ 31-5-233 or any other law  
4 prohibiting driving under the influence as defined by W.S.  
5 31-5-233(a)(v), whether the person was placed under arrest,  
6 whether he refused to submit to or complete a test upon  
7 request of the peace officer or if he submitted to and  
8 completed a test whether the test results indicated that  
9 the person had an alcohol concentration of eight one-  
10 hundredths of one percent (0.08%) or more, and whether,  
11 except for the persons described in this act who are  
12 incapable of refusing, he had been advised that his Wyoming  
13 driver's license or privilege to operate a motor vehicle  
14 shall be suspended for the period provided by W.S. 31-6-107  
15 if he refused to submit to or complete a test and suspended  
16 for ninety (90) days and subject him to criminal penalties  
17 if he submitted to and completed the test and the results  
18 indicate the person is under the influence of alcohol. At  
19 the conclusion of the hearing, the hearing examiner shall  
20 order that the suspension either be rescinded or sustained.  
21 If the person submitted to and completed a chemical test,  
22 the hearing examiner has the same authority to modify a  
23 license suspension under this act as he does under W.S.  
24 31-7-105.

1

2           **31-6-105. Method of performing chemical analysis;**  
3 **persons permitted to draw blood; request by arrested person**  
4 **for test; information made available; evidence of refusal**  
5 **to take test.**

6

7           (f) If a person under arrest refuses to submit to or  
8 complete a chemical test under this act, evidence of the  
9 refusal or failure to complete the test is admissible in  
10 any administrative, civil or criminal action or proceeding  
11 arising out of acts alleged to have been committed while  
12 the arrested person was driving or in actual physical  
13 control of a motor vehicle in violation of W.S. ~~31-5-233(b)~~  
14 31-5-233 or any other law prohibiting driving under the  
15 influence as defined by W.S. 31-5-233(a)(v).

16

17           **31-7-402. Issuance of ignition interlock restricted**  
18 **license; eligibility.**

19

20           (a) A person whose driver's license has been  
21 suspended pursuant to W.S. ~~31-6-107(a)(i)~~ 31-6-107(a) as a  
22 result of a violation related to a refusal to submit to or  
23 complete a test to determine the person's blood alcohol  
24 concentration, or suspended pursuant to W.S.

1 31-7-128(b) (ii) or revoked pursuant to W.S. 31-7-127(a) (ii)  
2 as a result of a violation related to operating a vehicle  
3 under the influence of alcohol, ~~or a refusal to comply with~~  
4 ~~a request to submit to a test to determine the person's~~  
5 ~~blood alcohol concentration, and who has served at least~~  
6 ~~forty five (45) days of the suspension period may~~ shall  
7 apply to the department for an ignition interlock  
8 restricted license for the balance of the suspension period  
9 or one (1) year, whichever is greater.

10

11 (c) An ignition interlock restricted license issued  
12 pursuant to subsection (a) ~~or (b)~~ of this section shall  
13 entitle the licensee to drive upon the highways of this  
14 state during the period his previously issued license is  
15 otherwise suspended or revoked, subject to the following  
16 conditions:

17

18 **Section 2.** W.S. 31-5-233(c) and (j) and 31-7-402(b)  
19 are repealed.

20

21 **Section 3.** This act is effective July 1, 2009.

22

23

(END)